

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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CLERK OF COURT
CLEVELAND

Anthony Fawcett,	:	Case No. 4:07CV1412
	:	
Plaintiff	:	Judge Kathleen O'Malley
	:	
v.	:	Magistrate Judge David S. Perelman
	:	
Commissioner of Social Security,	:	REPORT AND RECOMMENDED
	:	DECISION
Defendant	:	

The plaintiff has moved for an award of attorney fees pursuant to the Equal Access To Justice Act, 28 U.S.C. §2412(d)(1)(B) (EAJA).

The defendant does not challenge plaintiff's status as a prevailing party within the ambit of EAJA, thus entitling him to a fee award under the Act. The defendant does, however, question the amount sought, being counsel fees of \$3,040.44 and paralegal fees of \$49.50, for a total award of \$3,089.94.

There is an internal inconsistency in plaintiff's motion. Paragraph 10 states, in part, that "Plaintiff requests counsel fees of \$167.98 per hour based upon the \$125.00/hour EAJA amount plus the COLA adjustment." However, the following paragraph reads:


Accordingly, the undersigned requests an attorney EAJA fee of \$3,040.44 (18.10 hours at \$225.00 per hour) which is less than her standard fee; and a paralegal EAJA fee of \$49.50 (1.0 hours billable at \$45.00 per hour). This calculates to a total fee of \$3,089.94.

It is clear that plaintiff is not entitled to an EAJA award based upon a \$225.00 hourly rate.

The defendant is entirely correct in maintaining that \$165.42 is the maximum hourly rate which can be applied.

This Court also agrees with the defendant's position that the allowable attorney time should be reduced to 16.95 hours, and the paralegal time to .5 hours.

Based upon the foregoing, this Court recommends that an EAJA award be made to the plaintiff in the amount of \$2,826.36 (16.95 attorney hours at \$165.42 per hour plus .5 paralegal hours at \$45.00 per hour).



DAVID S. PERELMAN
United States Magistrate Judge

DATE: December 3, 2008

OBJECTIONS

Any objections to this Report and Recommended Decision must be filed with the Clerk of Courts within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order. *See, United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See, also, Thomas v. Arn*, 474 U.S. 140 (1985), *reh'g denied*, 474 U.S. 1111 (1986).